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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130802673-3673-01]

RIN 0648-BD49

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Revisions to Headboat Reporting Requirements for Species Managed  
by the Gulf of Mexico Fishery Management Council

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement management  
measures described in a framework action to the Fishery  
Management Plans for the Reef Fish Resources of the Gulf of  
Mexico (Gulf), as prepared by the Gulf of Mexico Fishery  
Management Council (Gulf Council); and Coastal Migratory Pelagic  
(CMP) Resources of the Gulf and South Atlantic Region, as  
prepared by the Gulf Council and the South Atlantic Fishery  
Management Council (South Atlantic Council) (Headboat Reporting  
Framework). If implemented, this rule would modify the  
recordkeeping and reporting requirements for headboat owners and  
operators who fish for species managed by the Gulf Council  
through the previously mentioned FMPs. These revisions would

require fishing records to be submitted electronically (via computer or internet) on a weekly basis or at intervals shorter than a week if notified by the NMFS' Southeast Fisheries Science Center (SEFSC) Science and Research Director (SRD), and would prohibit headboats from continuing to fish if they are delinquent in submitting reports. The purpose of this rule is to obtain timelier fishing information from headboats to better monitor recreational annual catch limits (ACLs), improve stock assessments, and improve compliance with reporting in Gulf fisheries.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2013-0111", by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0111](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0111), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Headboat Reporting Framework, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at [OIRASubmission@omb.eop.gov](mailto:OIRASubmission@omb.eop.gov), or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727-824-5305; e-mail:

Rich.Malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Councils manage the fisheries for Gulf reef fish and Gulf and South Atlantic CMP under their respective FMPs. The FMPs were prepared by the Gulf and South Atlantic Councils and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, to minimize bycatch and bycatch mortality to the extent practicable, and to establish accountability measures (AMS) for stocks to ensure that ACLs are not exceeded.

One of the purposes of this proposed rule is to allow better monitoring of recreational ACLs to reduce the amount of

recreational ACL overages. Currently, overages have the potential to result in significant disruption in fishing behavior the following fishing year and to reduce revenue and profit for fishermen. Overages also may decrease the ability of stocks to rebuild when overfished and may lead to overfishing conditions. The management measures contained in this proposed rule, including requiring headboats to report electronically and increasing the frequency of headboat reporting, would help improve monitoring of the recreational ACLs.

The other purposes of this proposed rule are to improve stock assessments and to improve data reporting compliance in Gulf fisheries. Headboat landings are an important component of stock assessments. The increased frequency of headboat data reporting and electronic reporting required by this rule would help to improve stock assessments because it would provide a more accurate picture of headboat landings. Headboat owners and operators who are delinquent on submitting reports would not be allowed to fish until all required reports have been submitted. This requirement should help to improve compliance with data reporting within the recreational sector.

In addition, the management measures contained in this proposed rule are compatible with the proposed revisions to headboat reporting requirements for fisheries managed by the South Atlantic Council.

## Management Measures Contained in the Proposed Rule

This proposed rule would: require electronic reporting for headboat vessels in the Gulf reef fish and Gulf coastal migratory pelagic fisheries; increase the reporting frequency for headboat vessels in these fisheries; and prohibit headboats from continuing to fish if they are delinquent in submitting their reports.

### Mandatory Electronic Reporting for Headboat Vessels

Currently, a headboat selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips, as specified by the SRD, and on forms provided by the SRD. Until January 1, 2013, the SRD provided federally permitted headboats with paper forms to submit their fishing data. However, as of January 1, 2013, the SRD requested that federally-permitted headboats report electronically. This proposed rule would revise the regulations to explicitly require that headboats submit their fishing information electronically (via computer or internet). NMFS would require headboat owners and operators, who are selected by the SRD, to submit a detailed electronic fishing record of all fish caught through the "Southeast Region Headboat Survey," an electronic reporting system developed by the SEFSC for trips completed, and to submit no fishing reports when no trips are taken.

Headboat owners and operators would be required to submit an electronic logbook (eLog) form instead of a paper form. This form is available through a password protected Web site that can be accessed by personal computer, computer tablet, or "smart" phone (an application can be downloaded on both Android phones and iPhones). The Web site can be accessed at <https://selogbook.com>. An access code is required to log in to the Web site. Bluefin Data also requires a current email address for each vessel owner to send access codes and other information regarding the Web site to vessel owners. Once Bluefin Data registers a vessel owner and provides the vessel owner with an access code via email, the vessel owner is able to log in to the Web site and create a password for his account. The vessel owner can register more than one vessel under his password and more than one captain. The vessel owner determines who can access the Web site using his password.

The data elements for completed trips that are currently being collected by the SRD include date(s) and duration of fishing; vessel name and official number of the vessel; captain name; location of fishing in lat/long; number of anglers; minimum, maximum and primary depth fished; number of fish of each species kept; and number of fish of each species released.

During catastrophic conditions only, this rule would allow headboat owners and operators to use a paper-based system for

submitting electronic fishing records. The Regional Administrator (RA) would determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants are affected. The RA would provide notice of a paper-based system via notification in the Federal Register, NOAA weather radio, fishery bulletins, and other appropriate means and would authorize the use of the paper-based system for the duration of the catastrophic conditions. The paper forms would be available from NMFS. During catastrophic conditions, the RA would have the authority to waive or modify reporting time requirements.

#### Increase Reporting Frequency for the Headboat Sector

Currently, headboat reporting forms are due on a monthly basis, and must either be made available to a fisheries statistics reporting agent or be postmarked no later than 7 days after the end of each month and sent to the SRD. This proposed rule would modify the frequency of reporting to be on a weekly basis (or intervals shorter than a week if notified by the SRD) and would be due by 11:59 p.m., local time, the Sunday following a reporting week. A reporting week is defined as beginning at 12:01 a.m., local time, on Sunday and ending at 11:59 p.m., local time, the following Saturday. If no fishing activity occurred during a reporting week, an electronic report so



stating would be required to be submitted for that reporting week.

#### Non-compliance with Reporting Requirement

This rule would prohibit headboat owners and operators who are delinquent in submitting their fishing records from continuing to harvest and possess Gulf reef fish and Gulf coastal migratory pelagic fish until all required fishing records have been submitted. The owner and operator are liable for all prohibited harvest and possession onboard the vessel, including that by the crew and/or passengers. This provision would aid in enforcement efforts to ensure that electronic fishing records are submitted in a timely manner.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NOAA Assistant Administrator for Fisheries (AA) has determined that this proposed rule is consistent with the two affected FMPs, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial

number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to change the current reporting requirements for federally permitted headboats that operate in the Gulf exclusive economic zone (EEZ) in order to improve data collection methods to help ensure that landings of managed fish stocks are recorded accurately and in a timely manner so that recreational ACLs are not exceeded. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would be expected to directly affect an estimated 70 headboat for-hire fishing businesses that operate in the Gulf EEZ. The average headboat is estimated to receive approximately \$247,000 (2012 dollars) in annual gross revenue. NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including seafood dealers and harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million

(NAICS code 487210, fishing boat charter operation). The SBA periodically reviews the size criteria and establishes new thresholds when appropriate. The most recent final rule establishing new size criteria was published June 20, 2013 (78 FR 37398). However, the receipts threshold for the for-hire industry was not changed as a result of the latest or other recent review and rulemaking by the SBA. Because the average annual revenue for the headboat businesses expected to be directly affected by this proposed rule is significantly less than the SBA revenue threshold, all these businesses are determined, for the purpose of this analysis, to be small business entities.

This proposed rule, if implemented, would require headboat fishing businesses selected by the SRD to submit weekly records, or at shorter intervals if notified by the SRD, of their fishing activity via computer or internet (electronic reporting). This requirement would not be expected to require special professional skills. The use of computers, the internet, or other forms of electronic connections and communication is commonplace in the business environment. As a result, all affected small entities would be expected to already have staff with the appropriate skills and training to meet this requirement.

This proposed rule, if implemented, would be expected to have little to no impact on the profits of any of the small entities expected to be directly affected. Although not currently explicitly required by regulation, the SRD has requested electronic reporting since January 1, 2013, for federally-permitted Gulf headboats. As a result, most, if not all, Gulf headboat businesses are expected to currently be submitting reports of their fishing activity electronically. For any headboat business that may not currently use the electronic reporting system, any increase in operating expenses should be minor. The use of computers and the internet is commonplace and a vital tool in business management. The SBA estimated that in 2010 approximately 94 percent of businesses had a computer and 95 percent of these had internet service. As a result, the majority of the affected entities would not be expected to need to incur new operational expenses to report electronically. For those few entities that might not already be reporting electronically, any new expenses that might need to be incurred would not be expected to constitute a significant increase in business expenses. Computers under \$750 are readily available and internet services under \$100 per month would be expected to be available in most locations. The estimated average annual revenue for a Gulf headboat business is approximately \$247,000 (2012 dollars). NMFS estimates that the

requirement for Gulf headboat owners and operators to report electronically would result in a net zero effect on the reporting burden of affected entities compared to paper reporting. The estimated reporting burden under either paper or electronic reporting is 10 minutes per report, or approximately 16.7 hours per entity per year based on an average of 100 reports per year. Assuming an hourly wage rate of \$22.42 (2012 dollars, mean hourly wage rate, first-line supervisors of farming, fishing, and forestry workers), the estimated total annual cost to submit 100 reports would be approximately \$374. As previously stated, this cost would not be expected to change as a result of the proposed requirement for electronic reporting. Therefore, the proposed requirement for electronic submission of headboat reports would be expected to result in minor to no direct economic effect on most, if not all, Gulf headboat businesses.

This proposed rule, if implemented, would also increase the frequency of reporting by Gulf headboat businesses selected by the SRD from the current requirement of monthly reports that must be submitted within 7 days of the end of each month to weekly reporting (7 days after the end of each week ending on Sunday) or at shorter intervals if notified by the SRD. Keeping accurate records is essential to successful business operation. As a result, recording trips as they are completed, or as soon

as is practical, is expected to be the common business practice. Electronic recording and reporting would be expected to support additional labor and business management efficiencies because it would be expected to allow better data storage, retrieval, and production of annual performance summaries for use in business planning. Therefore, the proposed increase in the frequency of reporting would be expected to require little, if any, change in business practices or associated operational costs.

Additionally, this proposed rule would prohibit vessels from fishing if required fishing records have not been submitted within the required timeframe. Although a prohibition on fishing could have a significant adverse economic effect on the affected business, depending on the duration of prohibition and revenue from non-fishing activities, failure to submit the required electronic fishing records would not be an economically rational business practice in light of the minimal burden to submit fishing records and potential consequences of non-compliance. As a result, few if any headboat businesses would be expected to experience any reduction in profit as a result of this component of this proposed rule.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would not have a significant economic effect on a substantial number of small entities. As a

result, an initial regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. NMFS is revising the collection-of-information requirements under OMB control number 0648-0016. NMFS estimates the requirement for Gulf headboat owners and operators to report electronically would result in a net zero effect on the reporting burden under OMB control number 0648-0016, because headboat owners and operators would continue to report all species harvested, however, now it would be electronically instead of by paper. NMFS estimates the requirement for headboat owners and operators to report more frequently (weekly instead of monthly) would not create more burden on headboat owners and operators, because the headboat owners and operators would still be reporting the same amount of information, they would just be transmitting the data more frequently. These estimates of the public reporting burden

include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

These requirements have been submitted to OMB for approval. NMFS seeks public comment regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).



List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Headboat, Reporting and  
recordkeeping requirements.

Dated: October 21, 2013

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622  
is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH  
ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.26, paragraph (b) is revised to read as follows:

§ 622.26 Recordkeeping and reporting.

\* \* \* \* \*

(b) Charter vessel/headboat owners and operators--(1) General reporting requirement--(i) Charter vessels. The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(ii) Headboats. The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued, as required under § 622.20(b), or whose vessel fishes for or lands such reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph

(b) (2) (ii) of this section, via the Southeast Region Headboat Survey.

(2) Reporting deadlines--(i) Charter vessels. Completed fishing records required by paragraph (b) (1) (i) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) Headboats. Electronic fishing records required by paragraph (b) (1) (ii) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(3) Catastrophic conditions. During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b) (1) (ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected

participants via publication of notification in the Federal Register, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) Compliance requirement. Electronic reports required by paragraph (b)(1)(ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the time specified in paragraph (b)(2)(ii) is delinquent. A delinquent report automatically results in the owner and operator of a headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

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3. In § 622.374, paragraph (b) is revised, to read as follows:

§ 622.374 Recordkeeping and reporting.

\* \* \* \* \*

(b) Charter vessel/headboat owners and operators--(1) General reporting requirement--(i) Charter vessels. The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or South Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Gulf or South Atlantic coastal migratory fish in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2)(i) of this section.

(ii) Gulf headboats. The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory fish has been issued, as required under § 622.370(b)(1), or whose vessel fishes for or lands Gulf coastal migratory pelagic fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested

within the time period specified in paragraph (b) (2) (ii) of this section, via the Southeast Region Headboat Survey.

(iii) South Atlantic headboats. The owner or operator of a headboat for which a charter vessel/headboat permit for South Atlantic migratory pelagic fish, as required under § 622.370(b) (1), or whose vessel fishes for or lands South Atlantic coastal migratory fish in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b) (2) of this section.

(2) Reporting deadlines--(i) Charter vessels. Completed fishing records required by paragraph (b) (1) (i) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) Gulf headboats. Electronic fishing records required by paragraph (b) (1) (ii) of this section for Gulf headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so

stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(iii) South Atlantic headboats. Completed fishing records required by paragraph (b)(1)(iii) of this section for South Atlantic headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked no later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(3) Catastrophic conditions. During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b)(1)(ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the Federal Register, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) Compliance requirement. Electronic reports required by paragraph (b)(1)(ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the time specified in paragraph (b)(2)(ii) is delinquent. A delinquent report automatically results in the owner and operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued being prohibited from harvesting or possessing such species, regardless of any additional notification to the delinquent owner and operator by NMFS. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

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[FR Doc. 2013-25263 Filed 10/24/2013 at 8:45 am; Publication  
Date: 10/25/2013]